

383726/17867

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,)	
)	
Plaintiff,)	Civil Action No. 06-370-JJF
)	
v.)	
)	
STANLEY W. TAYLOR, FIRST)	
CORRECTIONAL MEDICAL,)	
CORRECTIONAL MEDICAL SERVICES,)	
)	
Defendants.)	

NOTICE OF MOTION

Via Electronic Service

Kevin Connors, Esquire
Lorenza A. Wolhar, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
1220 N. Market, St., 5th Fl.
P.O. Box 8888
Wilmington, DE 19899

Via First Class Mail

Michael Lee Rose
SBI# 097880
Delaware Correctional Center
1811 Paddock Road
Smyrna, DE 19977

VIA US MAIL

Dr. Tammy Kastre
First Correctional Medical
205 W. Giaconda Way, Suite 115
Tucson, AZ 85704

383726/17867

PLEASE TAKE NOTICE that the attached Motion will be presented to the Court at the convenience of the Court.

Heckler & Frabizzio, P.A.

/s/Daniel L. McKenty

Daniel L. McKenty, *DE Bar No. 2689*

800 Delaware Avenue, Suite 200

PO BOX 128

Wilmington, DE 19899

Attorney for Defendant

383726/17867

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,

Plaintiff,

V.

STANLEY W. TAYLOR, FIRST)
CORRECTIONAL MEDICAL,)
CORRECTIONAL MEDICAL SERVICES,)
)
Defendants.)

Civil Action No. 06-370-JJF

RULE 7.1.1 STATEMENT

Because Plaintiff is pro se, this case is exempt from Rule 7.1.1 requirements

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STANLEY W. TAYLOR, FIRST)	
CORRECTIONAL MEDICAL,)	
CORRECTIONAL MEDICAL SERVICES,)	
)	
Defendants.)	

MOTION TO WITHDRAW

Pursuant to the Delaware Lawyers' Rules of Professional Conduct 1.16 (b)(5),(6), and Rule 83.7 of the Local Rules for the District of Delaware, the undersigned attorneys hereby request leave to withdraw as defense counsel for First Correctional Medical in the above captioned matter for the following reasons:

1. First Correctional Medical - Delaware, LLC contracted with the State of Delaware to provide health care to the Delaware Department of Correction from July 1, 2002 through June 30, 2005.

2. From July 1, 2002 through June 30, 2005, First Correctional Medical - Delaware, LLC, and its employees were insured for professional liability by Chubb Group of Insurance Companies.

3. Chubb Group of Insurance Companies retained McCullough & McKenty, P.A.,¹ Daniel L. McKenty, Esquire, Steven F. Mones, Esquire, and Dana Spring Monzo², Esquire

¹ McCullough & McKenty has dissolved. Mr. McKenty has moved to Heckler & Frabizzio P.A. and Substitutions of Counsel have been filed.

383726/17867

(formerly Dana M. Spring, Esquire), to provide medical malpractice and 42 U.S.C. § 1983 defense coverage for First Correctional Medical - Delaware, LLC, and its various employees.

4. After the termination of its health care contract with the Delaware Department of Correction, First Correctional Medical - Delaware, LLC ceased operations in the State of Delaware. Although no formal dissolution papers were filed with the State of Delaware, it is the understanding of the undersigned defense counsel that First Correctional Medical - Delaware, LLC, has no assets

5. For all claims arising on or after July 1, 2005, First Correctional Medical - Delaware, LLC, elected to proceed as a self-insured entity. McCullough & McKenty, Mr. McKenty, and Ms. Monzo remained counsel for First Correctional Medical - Delaware, LLC, and its employees.

6. First Correctional Medical Inc., the Arizona-based parent company of First Correctional Medical - Delaware, LLC, funded the defense of lawsuits against First Correctional Medical and its various employees after July 1, 2005.

7. In October 2006, the undersigned defense counsel for First Correctional Medical - Delaware, LLC, was made aware that First Correctional Medical, Inc., was experiencing severe financial difficulties and could not meet its financial obligations with respect to defense and indemnity costs of lawsuits pending in the State and/or District of Delaware. At that time, First Correctional Medical, Inc., was several months behind on its payments of legal fees to McCullough & McKenty, P.A.

² Mr. Mones and Ms. Spring are longer affiliated with McCullough and McKenty P.A. nor with Heckler & Frabizzio.

383726/17867

8. After lengthy conversations and correspondence with Tammy Kastre, M.D. (CEO of First Correctional Medical, Inc.), Michael Johnson (CFO of First Correctional Medical, Inc.), Todd Jackson, Esquire (Arizona Corporate Counsel for First Correctional Medical, Inc.), and Jonathan Rothschild, Esquire (Arizona Financial Counsel for First Correctional Medical, Inc.), McCullough & McKenty, P.A., agreed to continue to represent First Correctional Medical - Delaware, LLC, and its employees, with the understanding that McCullough & McKenty's legal fees would be brought current, a monthly budget would be put in place regarding the continued defense of First Correctional Medical lawsuits, McCullough & McKenty would be kept abreast of any changes to the viability of First Correctional Medical, Inc., and finally that failure to adhere to these requests would result in the withdrawal of McCullough & McKenty, P.A., as counsel for First Correctional Medical - Delaware, LLC, and its employees.

9. Until December 31, 2006, First Correctional Medical, Inc., did its best to bring McCullough & McKenty, P.A., current on its legal bills and actually came within \$30,000 of the monies owed.

10. Since January 1, 2007, First Correctional Medical, Inc., has not made any payments to McCullough & McKenty, P.A., despite promising a \$30,000 check for past legal services rendered and promising to establish a monthly retainer fund. In July 2007, McCullough & McKenty P.A. dissolved and Mr. McKenty moved to Heckler & Frabizzio. First Correctional Medical has not discussed its intentions with Heckler & Frabizzio. To date, Heckler & Frabizzio, continues to defend First Correctional Medical - Delaware, LLC, and its employees in over (25) twenty-five lawsuits despite being unable to contact First Correctional Medical Inc., officials and being in arrears of legal fees in excess of \$50,253.55 owed to McCullough & McKenty and \$17,672.00 owed to Heckler & Frabizzio.

383726/17867

11. The undersigned defense counsel has not only attempted to contact officials from First Correctional Medical, Inc, regarding its outstanding fees, but the undersigned counsel has also made numerous attempts to contact officials from First Correctional Medical, Inc., regarding various litigation strategies and the funding of expert fees in defensible cases quickly approaching trial. First Correctional Medical Inc.'s officials have responded to Court Ordered participation in mediation and Court Ordered response to Discovery. Those officials have not discussed their strategy for resolving these cases

12. The undersigned counsel request permission to withdraw as counsel for First Correctional Medical because First Correctional Medical, Inc., has substantially failed to meet its financial obligations to McCullough & McKenty, P.A., and to Heckler & Frabizzio, P.A., and Heckler & Frabizzio cannot sustain the financial burden of funding First Correctional Medical Inc.'s legal defense in the State/District of Delaware. Furthermore, First Correctional Medical cannot be reached for guidance regarding legal strategies and general defense of its cases.

13. Because First Correctional Medical, Inc., is no longer funding the defense of its former employees in lawsuits in the State of Delaware, the former employees may be in a position adverse to First Correctional Medical, Inc. The undersigned counsel submit that they cannot continue the representation of the individually named employees of First Correctional Medical, Inc., as a conflict of interest now exists between the parties.

14. Further, the undersigned requests this Court grant First Correctional Medical a reasonable extension of time to object to service of process as preserved in Defendant's Affirmative Defenses outlines in its answer, obtain new Counsel and respond to discovery.

15. For the abovementioned reasons, the undersigned hereby request that they be

383726/17867

permitted to withdraw as counsel for First Correctional Medical Inc., in the above captioned matter.

Heckler & Frabizzio, P.A.

/s/Daniel L. McKenty

Daniel L. McKenty, *DE Bar No. 2689*

800 Delaware Avenue, Suite 200

PO BOX 128

Wilmington, DE 19899

Attorney for Defendant

383726/17867

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AARON K. CARTER

Plaintiff,

V.

Civ. No. 06-651-SLR

Jury of 12 Demanded

COMMISSIONER STANLEY TAYLOR,)
WARDEN THOMAS CARROLL. DR.)
TAMMY Y. KASTRE, LINDA HUNTER,)
CORRECTIONAL MEDICAL SYSTEMS,)
S/LT. ALISHA PROFACI,)
LT. PETER FORBES)

Defendants.

ORDER

And now this _____ day of _____, 2008, having considered *Heckler & Frabizzio, P.A., Daniel L. McKenty, Esquire's, Motion to Withdraw* and any opposition thereto, it is HEREBY ORDERED that *Heckler & Frabizzio, P.A., Daniel L. McKenty, Esquire*, is granted.

J.

383726/17867

CERTIFICATE OF SERVICE

I, Daniel L. McKenty, hereby certify that, on February 25, 2008, one copy of defendant, Motion to Withdraw, were served, on the following individuals:

Via Electronic Service

Kevin Connors, Esquire
Lorenza A. Wolhar, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
1220 N. Market, St., 5th Fl.
P.O. Box 8888
Wilmington, DE 19899

Via First Class Mail

Michael Lee Rose
SBI# 097880
Delaware Correctional Center
1811 Paddock Road
Smyrna, DE 19977

VIA US MAIL

Dr. Tammy Kastre
First Correctional Medical
205 W. Giaconda Way, Suite 115
Tucson, AZ 85704

HECKLER & FRABIZZIO

/s/Daniel L. McKenty
Daniel L. McKenty
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P. O. Box 128
Wilmington, DE 19899-0128
Attorney for Defendants